

OPINION
65-107

February 9, 1965 (OPINION)

Honorable Oscar J. Sorlie

State Senator

RE: Higher Education - Appropriations - Transfer

The Appropriations Committee of the Thirty-ninth Legislative Assembly has requested the official opinion of this office relative to the power of the Board of Higher Education to transfer funds for an institution of higher learning from one line item of an appropriation to another line item of an appropriation for a given institution.

In accordance with a Memorandum issued by this office on February 5, 1965, a copy of which is attached hereto, we believe there is some doubt that the Board of Higher Education may transfer monies from one lined item of an appropriation to another lined item of an appropriation for the same institution without express authority therefor.

In the attached Memorandum we noted there is a possibility the pertinent provisions of the North Dakota Constitution (Article 54) might be construed to limit the Legislative Assembly to a "lump sum" appropriation for each institution of higher learning under the control of the Board, such appropriation to be expended within the discretion of the Board. The only limitation upon such expenditures would then be the provision prohibiting the Board from using the expenditure designated for one institution for any other institution. As also noted in the Memorandum, however, this practice has not, to our knowledge, been followed and we mention this possibility without intending to express any belief or opinion thereon.

It is our belief that when the Legislature makes an appropriation for a given institution and, in such appropriation, specifies by lined items the purposes for which such appropriation is to be used, the Legislature has thereby indicated such monies are to be used only for the purposes specified. In view of this fact, it is our opinion that doubt exists as to the authority of the Board of Higher Education to transfer monies among the lined items of the appropriation or to use such monies for purposes other than those specified by the lined items without additional legislative authority for such action. This conclusion is based upon Section 54-16-03 of the North Dakota Century Code.

If it is considered desirable to permit such a transfer, it would appear a specific provision relative to such action should be made in order to clarify the matter. If such provision is not made, and a transfer is made by the Board or is desired to be made by the Board, a court test relative to the powers of the Board under Article 54 of the North Dakota Constitution may be necessary to finally determine the matter.

HELGI JOHANNESON

Attorney General